

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
FEBRUARY SESSION, 1999

FILED

March 17, 1999

Cecil W. Crowson
Appellate Court Clerk

STATE OF TENNESSEE,)
)
Appellee)
)
vs.)
)
THOMAS HARLAN MARTIN,)
)
Appellant)

No. 01C01-9805-CC-00219

BEDFORD COUNTY

Hon. William Charles Lee, Judge

(Misdemeanor Assault)

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(ON APPEAL)

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(AT TRIAL)

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OPINION FILED: _____

AFFIRMED

David G. Hayes
Judge

OPINION

The appellant, Thomas Harlan Martin, appeals his Bedford County jury conviction for misdemeanor assault.¹ The trial court subsequently imposed a sentence of eleven months, twenty-nine days with a release eligibility of seventy-five percent. In his sole issue on appeal, he contends that the evidence is insufficient as a matter of law to sustain his conviction.

After review of the record, we affirm the judgment of the trial court.

Background

At trial, Mrs. Martin testified that she and the appellant were married on November 5, 1996, and divorced in July 1997. After their divorce, the appellant “was kind of living off and on with [Mrs. Martin]” at her residence. On Saturday, October 25, 1997, the appellant commenced upon a four day binge of inflicting physical abuse upon his ex-wife. Throughout her four day ordeal, Mrs. Martin “was forbidden [by the appellant]. . . to leave” the residence. Finally, on October 28, four days after the abuse began, Mrs. Martin was able to escape when the appellant fell asleep on the couch. At trial, Mrs. Martin conceded that she wrote a note exculpatory to the appellant;² however, she explained that she only did so to “get him off of [her] back.”

At approximately seven o'clock on the evening of October 28, Bedford County Deputy Janet Hammack was on patrol when she received a dispatch

¹The appellant was indicted on December 15, 1997, on one count of aggravated assault and one count of reckless endangerment. At the conclusion of the State's case in chief, the trial court found the evidence insufficient to support the charge of reckless endangerment as charged in the indictment. Accordingly, the trial court dismissed this count. Following the trial court's instruction on the remaining count of aggravated assault, the jury returned a guilty verdict upon the lesser offense of assault.

²The handwritten note stated, “Thomas Martin did not doe [sic] this to me.”

directing her to the Birch Street residence of Thomas McClendon, where Mrs. Martin had sought refuge. Deputy Hammack related that “[Mrs. Martin’s] whole face and neck was totally black and blue and purple;” “her eyes were very swollen due to glass being in her face and in her eyes.” After briefly speaking with Mrs. Martin, Deputy Hammack transported her to the hospital, where Mrs. Martin remained for the next five days.

Dr. Norman Saliba was introduced as an expert witness in the field of general medicine. He testified that he was Mrs. Martin’s attending physician when she was admitted to the emergency room on October 28. Dr. Saliba observed “many bruises from her top of her head down to about her mid-thigh. Most of those were on the front part of her body.” Because Mrs. Martin had sustained a rather large injury to her left cheek resulting in a fracture to the interior rim of the eye, Dr. Saliba admitted Mrs. Martin into the hospital. During his testimony, Dr. Saliba explained that bruises develop and heal through various phases of coloration. Using this knowledge, he determined that the bruises on Mrs. Martin’s person were recently inflicted. He also opined that Mrs. Martin’s injuries were neither accidental nor self-inflicted.

The appellant testified in his own defense. He denied inflicting any form of physical abuse upon his ex-wife during the period from October 25 through October 28, 1997. Rather, he explained that his wife sustained multiple falls as a result of a drunken stupor induced from drinking a combination of “corn cob wine” and several quarts of Silver Thunder beer. He explained that he asked Mrs. Martin to write the note exculpating him because he anticipated the very allegations that resulted. Although the appellant denied any physical abuse of the victim, he did acknowledge that Mrs. Martin “busted a picture frame over my head” and that he retaliated by “bust[ing] one over hers.”

Based upon this evidence, the jury found the appellant guilty of assault.

Analysis

Again, in his sole issue, the appellant contends that the evidence is legally insufficient to support his conviction of misdemeanor assault. Specifically, he asserts that he “is the victim of a spiteful ex-wife,” whose vague and contradictory testimony should be totally discredited. The appellant’s challenge is one of witness credibility. In essence, the appellant requests that this court trespass upon the jury’s responsibility to evaluate the credibility of the witnesses and reweigh the evidence introduced at the trial by reassessing the credibility of the victim, Mrs. Martin. It is not the duty of this court to revisit questions of witness credibility on appeal, that function being within the province of the trier of fact. See generally State v. Adkins, 786 S.W.2d 642, 646 (Tenn. 1990); State v. Burlison, 868 S.W.2d 713, 718-19 (Tenn. Crim. App. 1993); State v. Matthews, 805 S.W.2d 776, 779 (Tenn.Crim.App.1990). We decline the appellant’s invitation to overturn his conviction by making a choice different from that of the jury.

Moreover, we conclude that the evidence is more than sufficient to support the jury’s verdict. The evidence, taken in the light most favorable to the State, reveals that Mrs. Martin was beaten by the appellant over a four day period. Specifically, he beat her, pulled her hair, and slapped her. In addition to substantial bruising all over her body, her eyes were swollen shut, she sustained a fractured cheekbone, and she remained hospitalized for five days. This proof is more than sufficient to establish the elements of misdemeanor assault.³ Jackson v. Virginia, 443 U.S. 307, 317, 99 S.Ct. 2781, 2789 (1979); Tenn. R. App. P. 13(e). This issue is without merit.

The judgment of the trial court is affirmed.

³See Tenn. Code Ann. § 39-11-106(a)(2) (1997).

DAVID G. HAYES, Judge

CONCUR:

JAMES CURWOOD WITT, JR., Judge

JAMES EVERETT WILLIAMS, Judge